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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION

THOMAS LEONARD, et al.,  Plaintiffs,  v.  BIMBO BAKERIES USA, INC., et al.,  Defendants.	No. C 05-00829 JW (HRL)  DECLARATION OF BETSY CARROLL RE: SEPARATE FILING OF SECOND CASE MANAGEMENT STATEMENT OF DEFENDANTS BIMBO BAKERIES USA, INC. AND GEORGE WESTON BAKERIES, INC.
And Related Action  KATHLEEN MORRISON, et al.,  Plaintiffs,  v.  BIMBO BAKERIES USA, INC., et al.,  Defendants.	Date: November 19, 2007 Time: 9:00 a.m. Place: Department 8 Judge: Hon. James Ware  No. C 07-03156 JW

I, Betsy Carroll, declare:

1. I am an associate in the law firm of Bingham McCutchen LLP, and  
 counsel for Defendant Bimbo Bakeries USA, Inc. ("BBU") in the above-entitled actions. I have

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1 personal knowledge of the facts set forth in this declaration and would be competent to testify to  
2 the truth thereof if called to do so.

3 2. I submit this declaration pursuant to Northern District Local Rule 16-9(a),  
4 which requires that a party filing a separate case management statement submit an accompanying  
5 declaration describing the party's efforts to file a joint case management statement.

6 3. Because BBU took the laboring oar on the parties' first case management  
7 statement filed in this action, in 2005, the parties agreed that Plaintiffs would prepare the first  
8 draft of the second case management statement.

9 4. The first draft case management statement that BBU received from  
10 Plaintiffs did not conform with the format required in the Northern District for case management  
11 statements. On November 2, 2007, BBU contacted Plaintiffs' counsel, Ira Spiro, and requested  
12 that Plaintiffs provide a case management statement in the proper format. BBU stated that it  
13 would provide comments once the statement was in the proper form.

14 5. BBU received a draft case management statement, in the proper format,  
15 from Plaintiffs at approximately 10:30 a.m. on Wednesday, November 7. Mr. Spiro set a  
16 deadline for BBU to provide comments of 10 a.m. on the next day, Thursday, November 8. Mr.  
17 Spiro stated that he would be traveling beginning late in the day on Thursday the eighth through  
18 Friday, November 9.

19 6. As I was reviewing Plaintiffs' first draft, I contacted Mr. Spiro by e-mail  
20 to ask whether he was planning to have the Plaintiffs in the *Morrison* action also join in the case  
21 management statement because it was BBU's understanding that the Court had directed BBU  
22 and both the *Leonard* and *Morrison* Plaintiffs to file one joint statement. Then, the *Morrison*  
23 Plaintiffs' attorney, Joe Gigliotti, sent an e-mail message to Mr. Spiro and me stating that the  
24 *Morrison* Plaintiffs intended to join in the joint statement.

25 7. I reviewed Mr. Spiro's draft of the joint case management statement on  
26 the afternoon of November 7. I provided BBU's comments to Messrs. Spiro and Gigliotti at  
27 approximately 7:15 p.m. on November 7.

1           8.       The parties exchanged draft case management statements several times  
2 between the evening of November 7, 2007 and the afternoon of November 9, 2007. Plaintiffs  
3 sent two rounds of revisions to the original draft and BBU sent three rounds of revisions in total.  
4 Ultimately, though, the parties were unable to agree on a joint statement. The main issues on  
5 which the parties could not agree were as follows:

- 6           a.       In the portion of the Case Management Statement where space was allocated to  
7                   give both parties an opportunity to describe their versions of the facts, Plaintiffs  
8                   insisted upon inserting additional statements of their position at the end of  
9                   Defendants' statement of facts. Defendants notified Plaintiffs' counsel that they  
10                  believed that this point-counterpoint format was unacceptable, and requested that  
11                  Plaintiffs summarize their entire position, including any responses to Defendants'  
12                  position, in one passage. Plaintiffs refused to do so. Plaintiffs also refused to  
13                  remove two other similar inappropriate point-counterpoint-style paragraphs  
14                  concerning motions for class certification.
- 15          b.       Plaintiffs refused to delete a repetitive paragraph requesting that the Court  
16                   consider the issue of notice to the proposed class members at the upcoming Case  
17                   Management Conference. BBU requested that Plaintiffs delete this paragraph  
18                   because any determination of form of notice at the Case Management Conference  
19                   would be premature as the parties have not yet exchanged proposed forms of  
20                   notice that reflect the current state of this lawsuit following the Court's issuance  
21                   of its ruling on summary judgment. Further, BBU believes that any determination  
22                   of notice should be scheduled to take place after the Court rules on certification  
23                   issues. BBU is willing to toll the statute of limitations until such a ruling can be  
24                   made.

25           9.       After Mr. Spiro and I concluded that the parties would be unable to agree  
26 on a form of case management statement, I contacted Mr. Gigliotti to ask whether he planned to

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1                   10.     file a joint or separate case management statement. I did not receive a  
2     response, but note that the *Leonard* and *Morrison* Plaintiffs have filed a joint case management  
3     statement.

4  
5                   I declare under penalty of perjury under the laws of the United States of America  
6     that the foregoing is true and correct.

7                   Executed this 9th day of November, 2007, in East Palo Alto, California.

8  
9                     
10                   Betsy Carroll